

**To:** Kivowitz, Sharon[Kivowitz.Sharon@epa.gov]; Robert R. Lucic[RLUCIC@sheehan.com]  
**Cc:** Sheila A. Woolson[SWoolson@ebglaw.com]; 'Biblow, Charlotte'[CBiblow@FarrellFritz.com]; John Privitera[PRIVITERA@mltw.com]; Miriam Villani[mvillani@swcblaw.com]; jmartin@gwtlaw.com[jmartin@gwtlaw.com]; Suzanne Avena[savena@garfunkelwild.com]; Thomas Smith[tsmith@bsk.com]; Phillip Landrigan[plandrigan@mccarthyfingar.com]; Peter Aufrichtig[peter@mccarthyfingar.com]; Courtney Herz[cherz@sheehan.com]; Levy, Sandra (USANYE)[Sandra.Levy@usdoj.gov]  
**From:** Kevin Maldonado  
**Sent:** Thur 4/14/2016 5:42:26 PM  
**Subject:** Re: Tolling Agreement  
Most Recent draft NCHGW tolling agreement as amended 4-6-16-4.pdf

Most recent draft of tolling agreement.

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**From:** "Kivowitz, Sharon" <Kivowitz.Sharon@epa.gov>  
**To:** Robert R. Lucic <RLUCIC@sheehan.com>  
**Cc:** Sheila A. Woolson <SWoolson@ebglaw.com>; "Biblow, Charlotte" <CBiblow@FarrellFritz.com>; John Privitera <PRIVITERA@mltw.com>; Miriam Villani <mvillani@swcblaw.com>; "jmartin@gwtlaw.com" <jmartin@gwtlaw.com>; Suzanne Avena <savena@garfunkelwild.com>; "Kevin Maldonado (kevinmaldonado64@yahoo.com)" <kevinmaldonado64@yahoo.com>; Thomas Smith <tsmith@bsk.com>; Phillip Landrigan <plandrigan@mccarthyfingar.com>; Peter Aufrichtig <peter@mccarthyfingar.com>; Courtney Herz <cherz@sheehan.com>; "Levy, Sandra (USANYE)" <Sandra.Levy@usdoj.gov>  
**Sent:** Wednesday, April 6, 2016 12:05 PM  
**Subject:** RE: Tolling Agreement

Rob,  
I have read the *United States v. Halliburton* opinion you attached to your April 1, 2016 email and have discussed it, and your concerns about the Tolling Agreement, with the Department of Justice. Neither the Department of Justice attorneys nor I agree with your interpretation of the *Halliburton* decision. Nowhere in the decision does the District Court hold, as you contend, that "a tolling agreement that does not expressly preserve a statute of limitations defense that may have run prior to the execution of the tolling agreement results in a waiver of that defense." Additionally, as I mentioned in my March 28, 2016 email to Thomas Smith, we believe that both the original Tolling Agreement and as amended on March 28, 2016, sufficiently address your stated concerns. Nevertheless, in the event that this will finally resolve the issue and result in execution of the Tolling Agreements, we are willing to make changes to paragraphs 1 and 4. I have attached an amended Tolling Agreement for your review and clients' signatures. Please return the signed agreements by Monday, April 11, 2016.

If you have any questions I can be reached at 212-637-3183.

Sharon

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**From:** Robert R. Lucic [mailto:RLUCIC@sheehan.com]  
**Sent:** Friday, April 01, 2016 10:43 AM  
**To:** Kivowitz, Sharon <Kivowitz.Sharon@epa.gov>  
**Cc:** Sheila A. Woolson <SWoolson@ebglaw.com>; 'Biblow, Charlotte' <CBiblow@FarrellFritz.com>; John Privitera <PRIVITERA@mltw.com>; Miriam Villani <mvillani@swcblaw.com>; jmartin@gwtlaw.com; Suzanne Avena <savena@garfunkelwild.com>; 'Kevin Maldonado (kevinmaldonado64@yahoo.com)' <kevinmaldonado64@yahoo.com>; Thomas Smith <tsmith@bsk.com>; Phillip Landrigan <plandrigan@mccarthyfingar.com>; Peter Aufrichtig <peter@mccarthyfingar.com>; Courtney Herz <cherz@sheehan.com>  
**Subject:** FW: Tolling Agreement

Sharon,  
I have been asked by and authorized by all counsel for the PRPs who attended the March 23, 2016 meeting to respond.  
Although counsel have not completed consulting with their individual clients regarding the advisability of entering into a tolling agreement, all counsel agree that they would not recommend that their clients sign the agreement as currently drafted, for two reasons.  
First, I attach a copy of *United States v. Halliburton*, a CERCLA case in which a District Court held that a tolling agreement that does not expressly preserve a statute of limitations defense that may have run prior to the execution of the tolling agreement results in a waiver of that defense. This is not an outcome any of the parties are willing to risk by signing the agreement. Therefore, including Tom Smith's proposed language

protecting against such a waiver is essential for the PRPs to consider signing the agreement.

The second problem with the current draft is that the tolling period runs until six months after the finalization of the 100% Remedial Design Report for OU-1. This timing is rather open-ended and it presupposes that the PRPs will agree to the Settlement Agreement and Order on Consent and will successfully undertake to perform the PDI and RD. However, the agreement makes no provision for the failure of such events to transpire, and places no time limits on the completion of any of these events. Under these circumstances we can see no reason not to have a simple 6-month tolling agreement that is renewable if the PRPs agree and perform.

At this point, I cannot represent that the PRPs will sign on to the tolling agreement, even with these changes, but, since no one intends to sign it as drafted, we think it makes sense to address these issues before moving forward.

Let us know how you would like to proceed.

Bob

**From:** "Kivowitz, Sharon" <[Kivowitz.Sharon@epa.gov](mailto:Kivowitz.Sharon@epa.gov)>

**Date:** 28 March 2016 at 11:08:46 AM GMT-4

**To:** "Smith, Thomas" <[SmithTR@bsk.com](mailto:SmithTR@bsk.com)>

**Cc:** Kevin Maldonado <[kevinmaldonado64@yahoo.com](mailto:kevinmaldonado64@yahoo.com)>, "Robert R. Lucic" <[RLUCIC@sheehan.com](mailto:RLUCIC@sheehan.com)>, "SWoolson@ebglaw.com" <[SWoolson@ebglaw.com](mailto:SWoolson@ebglaw.com)>, "Charlotte Biblow" <[CBiblow@FarrellFritz.com](mailto:CBiblow@FarrellFritz.com)>, "jmartin@garfunkelwild.com" <[jmartin@garfunkelwild.com](mailto:jmartin@garfunkelwild.com)>, "mvillani@swcblaw.com" <[mvillani@swcblaw.com](mailto:mvillani@swcblaw.com)>, "plandrigan@MccarthyFingar.com" <[plandrigan@MccarthyFingar.com](mailto:plandrigan@MccarthyFingar.com)>, "John J. Privitera" <[PRIVITERA@mltw.com](mailto:PRIVITERA@mltw.com)>, "William Ife ([wbife@verizon.net](mailto:wbife@verizon.net))" <[wbife@verizon.net](mailto:wbife@verizon.net)>

**Subject:** RE: Tolling Agreement

Hi,

While I believe the tolling agreement is clear that it relates to the Tolling Period as defined therein, I have discussed your concern and proposed language with the Department of Justice. They will agree to the language changes noted below. Similar language is also included in an existing tolling agreement that the United States signed with Verizon, et.al., regarding the former Sylcor Nuclear Fuel Production facility. I have attached a revised Tolling Agreement amended as below for signature. Call me if you have any questions.

Sharon

This Tolling Agreement does not constitute an admission or acknowledgment of any fact, conclusion of law, or liability by any party to this Tolling Agreement. Nor does this Tolling Agreement constitute an admission or acknowledgment by any party on the part of the United States to this Tolling Agreement that any statute of limitations, or defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. This Tolling Agreement also does not constitute an admission or acknowledgment by any party to this Tolling Agreement that the period allowed by whatever statute of limitations may apply to the Tolled Claims has not run prior to March 23, 2016. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable. Cooperating Party reserves all rights and defenses which it may have, except as set forth in this Tolling Agreement, to contest or defend any claim or action the United States may assert or initiate against Cooperating Party.

Please call me if you have any questions.

**From:** Smith, Thomas [<mailto:SmithTR@bsk.com>]

**Sent:** Friday, March 25, 2016 8:51 AM

**To:** Kivowitz, Sharon <[Kivowitz.Sharon@epa.gov](mailto:Kivowitz.Sharon@epa.gov)>

**Cc:** Kevin Maldonado <[kevinmaldonado64@yahoo.com](mailto:kevinmaldonado64@yahoo.com)>; Robert R. Lucic <[RLUCIC@sheehan.com](mailto:RLUCIC@sheehan.com)>; [SWoolson@ebglaw.com](mailto:SWoolson@ebglaw.com); Charlotte Biblow <[CBiblow@FarrellFritz.com](mailto:CBiblow@FarrellFritz.com)>; [jmartin@garfunkelwild.com](mailto:jmartin@garfunkelwild.com); [mvillani@swcblaw.com](mailto:mvillani@swcblaw.com); [plandrigan@MccarthyFingar.com](mailto:plandrigan@MccarthyFingar.com); John J. Privitera <[PRIVITERA@mltw.com](mailto:PRIVITERA@mltw.com)>; William Ife ([wbife@verizon.net](mailto:wbife@verizon.net)) <[wbife@verizon.net](mailto:wbife@verizon.net)>

**Subject:** Tolling Agreement

Sharon,

We are concerned that the proposed Tolling Agreement may not be clear enough that the PRPs do not waive a defense based on any statute of limitations that may have expired prior to the execution of the agreement. To remedy this, we request that you add the following language to paragraph 4:

“This Tolling Agreement shall not revive any claim or cause of action as to which the applicable statute of limitations has expired as of the effective date of this Agreement, and Cooperating Party does not waive any defense based on the expiration of a statute of limitations or the passage of time prior to the effective date of this Tolling Agreement.”

**Thomas R. Smith**

Member

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